

PATENT COOPERATION TREATY

From the INTERNATIONAL BUREAU

19 OCT 2005

PCT

NOTIFICATION CONCERNING TRANSMITTAL OF COPY OF INTERNATIONAL PRELIMINARY REPORT ON PATENTABILITY (CHAPTER I OF THE PATENT COOPERATION TREATY)

(PCT Rule 44bis.1(c))

To:

LLOYD WISE, McNEIGHT & LAWRENCE
c/o Commonwealth House
1-19 New Oxford Street
London WC1A 1LW
ROYAUME-UNI

Date of mailing (day/month/year)

13 October 2005 (13.10.2005)

Applicant's or agent's file reference

MP100397-WO

IMPORTANT NOTICE

International application No.

PCT/GB2004/001383

International filing date (day/month/year)

25 March 2004 (25.03.2004)

Priority date (day/month/year)

25 March 2003 (25.03.2003)

Applicant

NEUTEC PHARMA PLC et al

The International Bureau transmits herewith a copy of the international preliminary report on patentability (Chapter I of the Patent Cooperation Treaty)

The International Bureau of WIPO
34, chemin des Colombettes
1211 Geneva 20, Switzerland

Facsimile No. +41 22 740 14 35

Authorized officer

Nora Lindner

WA

25.10.05

Facsimile No. +41 22 338 89 65

MP100397-WO

PATENT COOPERATION TREATY

PCT

INTERNATIONAL PRELIMINARY REPORT ON PATENTABILITY

(Chapter I of the Patent Cooperation Treaty)

(PCT Rule 44bis)

Applicant's or agent's file reference MP100397-WO	FOR FURTHER ACTION	See item 4 below
International application No. PCT/GB2004/001383	International filing date (<i>day/month/year</i>) 25 March 2004 (25.03.2004)	Priority date (<i>day/month/year</i>) 25 March 2003 (25.03.2003)
International Patent Classification (IPC) or national classification and IPC 7 C12N 9/02		
Applicant NEUTEC PHARMA PLC		

1. This international preliminary report on patentability (Chapter I) is issued by the International Bureau on behalf of the International Searching Authority under Rule 44 bis.1(a).

2. This REPORT consists of a total of 8 sheets, including this cover sheet.

In the attached sheets, any reference to the written opinion of the International Searching Authority should be read as a reference to the international preliminary report on patentability (Chapter I) instead.

3. This report contains indications relating to the following items:

- | | | |
|-------------------------------------|--------------|---|
| <input checked="" type="checkbox"/> | Box No. I | Basis of the report |
| <input checked="" type="checkbox"/> | Box No. II | Priority |
| <input checked="" type="checkbox"/> | Box No. III | Non-establishment of opinion with regard to novelty, inventive step and industrial applicability |
| <input type="checkbox"/> | Box No. IV | Lack of unity of invention |
| <input checked="" type="checkbox"/> | Box No. V | Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement |
| <input type="checkbox"/> | Box No. VI | Certain documents cited |
| <input type="checkbox"/> | Box No. VII | Certain defects in the international application |
| <input type="checkbox"/> | Box No. VIII | Certain observations on the international application |

4. The International Bureau will communicate this report to designated Offices in accordance with Rules 44bis.3(c) and 93bis.1 but not, except where the applicant makes an express request under Article 23(2), before the expiration of 30 months from the priority date (Rule 44bis .2).

The International Bureau of WIPO 34, chemin des Colombettes 1211 Geneva 20, Switzerland	Date of issuance of this report 01 October 2005 (01.10.2005)
Facsimile No. +41 22 740 14 35	Authorized officer <div style="text-align: center; font-weight: bold;">Nora Lindner</div> Telephone No. +41 22 338 89 65

PATENT COOPERATION TREATY

From the
INTERNATIONAL SEARCHING AUTHORITY

REC'D ⁰⁵ 3 AUG 2004

PCT WIPO PCT

To:

see form PCT/ISA/220

WRITTEN OPINION OF THE INTERNATIONAL SEARCHING AUTHORITY (PCT Rule 43bis.1)

Date of mailing
(day/month/year) see form PCT/ISA/210 (second sheet)

Applicant's or agent's file reference
see form PCT/ISA/220

FOR FURTHER ACTION
See paragraph 2 below

International application No.
PCT/GB2004/001383

International filing date (day/month/year)
25.03.2004

Priority date (day/month/year)
25.03.2003

International Patent Classification (IPC) or both national classification and IPC
C12N9/02

Applicant
NEUTEC PHARMA PLC

1. This opinion contains indications relating to the following items:

- ☒ Box No. I Basis of the opinion
- ☒ Box No. II Priority
- ☒ Box No. III Non-establishment of opinion with regard to novelty, inventive step and industrial applicability
- ☐ Box No. IV Lack of unity of invention
- ☒ Box No. V Reasoned statement under Rule 43bis.1(a)(i) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement
- ☐ Box No. VI Certain documents cited
- ☐ Box No. VII Certain defects in the international application
- ☐ Box No. VIII Certain observations on the international application

2. **FURTHER ACTION**

If a demand for international preliminary examination is made, this opinion will usually be considered to be a written opinion of the International Preliminary Examining Authority ("IPEA"). However, this does not apply where the applicant chooses an Authority other than this one to be the IPEA and the chosen IPEA has notified the International Bureau under Rule 66.1bis(b) that written opinions of this International Searching Authority will not be so considered.

If this opinion is, as provided above, considered to be a written opinion of the IPEA, the applicant is invited to submit to the IPEA a written reply together, where appropriate, with amendments, before the expiration of three months from the date of mailing of Form PCT/ISA/220 or before the expiration of 22 months from the priority date, whichever expires later.

For further options, see Form PCT/ISA/220.

3. For further details, see notes to Form PCT/ISA/220.

Name and mailing address of the ISA:



European Patent Office
D-80298 Munich
Tel. +49 89 2399 - 0 Tx: 523656 epmu d
Fax: +49 89 2399 - 4465

Authorized Officer

Kalsner, I

Telephone No. +49 89 2399-8708



**WRITTEN OPINION OF THE
INTERNATIONAL SEARCHING AUTHORITY**

International application No.
PCT/GB2004/001383

Box No. I Basis of the opinion

1. With regard to the **language**, this opinion has been established on the basis of the international application in the language in which it was filed, unless otherwise indicated under this item.
 - ☐ This opinion has been established on the basis of a translation from the original language into the following language , which is the language of a translation furnished for the purposes of international search (under Rules 12.3 and 23.1(b)).
2. With regard to any **nucleotide and/or amino acid sequence** disclosed in the international application and necessary to the claimed invention, this opinion has been established on the basis of:
 - a. type of material:
 - ☒ a sequence listing
 - ☐ table(s) related to the sequence listing
 - b. format of material:
 - ☒ in written format
 - ☒ in computer readable form
 - c. time of filing/furnishing:
 - ☒ contained in the international application as filed.
 - ☒ filed together with the international application in computer readable form.
 - ☐ furnished subsequently to this Authority for the purposes of search.
3. ☐ In addition, in the case that more than one version or copy of a sequence listing and/or table relating thereto has been filed or furnished, the required statements that the information in the subsequent or additional copies is identical to that in the application as filed or does not go beyond the application as filed, as appropriate, were furnished.
4. Additional comments:

**WRITTEN OPINION OF THE
INTERNATIONAL SEARCHING AUTHORITY**

International application No.
PCT/GB2004/001383

Box No. II Priority

1. ☒ The following document has not been furnished:

☒ copy of the earlier application whose priority has been claimed (Rule 43*bis*.1 and 66.7(a)).

☐ translation of the earlier application whose priority has been claimed (Rule 43*bis*.1 and 66.7(b)).

Consequently it has not been possible to consider the validity of the priority claim. This opinion has nevertheless been established on the assumption that the relevant date is the claimed priority date.

2. ☐ This opinion has been established as if no priority had been claimed due to the fact that the priority claim has been found invalid (Rules 43*bis*.1 and 64.1). Thus for the purposes of this opinion, the international filing date indicated above is considered to be the relevant date.

3. Additional observations, if necessary:

**WRITTEN OPINION OF THE
INTERNATIONAL SEARCHING AUTHORITY**

International application No.
PCT/GB2004/001383

Box No. III Non-establishment of opinion with regard to novelty, inventive step and industrial applicability

The questions whether the claimed invention appears to be novel, to involve an inventive step (to be non obvious), or to be industrially applicable have not been examined in respect of:

- ☐ the entire international application,
- ☒ claims Nos. 17, with respect to industrial applicability

because:

- ☐ the said international application, or the said claims Nos. relate to the following subject matter which does not require an international preliminary examination (*specify*):
- ☐ the description, claims or drawings (*indicate particular elements below*) or said claims Nos. are so unclear that no meaningful opinion could be formed (*specify*):
- ☐ the claims, or said claims Nos. are so inadequately supported by the description that no meaningful opinion could be formed.
- ☒ no international search report has been established for the whole application or for said claims Nos. 17
- ☐ the nucleotide and/or amino acid sequence listing does not comply with the standard provided for in Annex C of the Administrative Instructions in that:
 - the written form ☐ has not been furnished
 - ☐ does not comply with the standard
 - the computer readable form ☐ has not been furnished
 - ☐ does not comply with the standard
- ☐ the tables related to the nucleotide and/or amino acid sequence listing, if in computer readable form only, do not comply with the technical requirements provided for in Annex C-*bis* of the Administrative Instructions.
- ☒ See separate sheet for further details

**WRITTEN OPINION OF THE
INTERNATIONAL SEARCHING AUTHORITY**

International application No.
PCT/GB2004/001383

Box No. V Reasoned statement under Rule 43bis.1(a)(i) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement

1. Statement

Novelty (N)	Yes: Claims	1-9, 11-25
	No: Claims	10
Inventive step (IS)	Yes: Claims	1-9, 19
	No: Claims	11-18, 20-25
Industrial applicability (IA)	Yes: Claims	1-16, 18-25
	No: Claims	

2. Citations and explanations

see separate sheet

Ad Section III: Non-establishment of opinion with regard to novelty, inventive step and industrial applicability

Claim 17 relates to subject-matter considered by this Authority to be covered by the provisions of Rule 67.1(iv) PCT. In this respect the following should be noted:

For the assessment of this claim on the question whether it is industrially applicable, no unified criteria exist in the PCT. The patentability can also be dependent upon the formulation of the claims. The EPO, for example, does not recognize as industrially applicable the subject-matter of claims to the use of a compound in medical treatment, but may allow, however, claims to a known compound for first use in medical treatment and the use of such a compound for the manufacture of a medicament for a new medical treatment.

Consequently, no opinion will be formulated with respect to the industrial applicability of the subject-matter of these claims (Article 34(4)(a)(I) PCT).

Ad Section V: Reasoned statement with regard to novelty, inventive step or industrial applicability

1) The present application relates to a *Clostridium difficile* lactate dehydrogenase. The enzyme was characterised and cloned from a *C. difficile* genomic library. Antibodies reacting with the enzyme were found in the serum of patients suffering from *C. difficile* infection. Use of the enzyme as well as an antibody specifically directed to it in medical and diagnostic applications is foreseen.

2) Novelty

2.1) **Claim 10** which is directed to an antibody specific against a *C. difficile* lactate dehydrogenase does not meet the requirements of Art. 33(2) PCT. From the application, p. 25, lines 2-3, it can be taken that a commercially available antibody reacted with the *C. difficile* enzyme of the application. Hence the antibody as defined in **claim 10** cannot be considered novel over this commercial antibody.

2.2) Claims directed to the enzyme itself and to the nucleic acid molecule encoding the enzyme, vectors, host cells, etc. (**claims 1-9**) are considered to meet the requirements of Art. 33(2)(3) PCT as the specific enzyme was not disclosed in nor

derivable in an obvious manner from the prior art.

- 2.3) Novelty can also be acknowledged for the claims directed to medicaments, diagnostic methods and methods of manufacture of a medicament (**claims 11-25**).

3) Inventive step

- 3.1) Inventive step, however, cannot be acknowledged for **claims 11-18 and 20-25** for the following reasons:

These claims are based on the assumption that the newly discovered protein, which is recognised by antibodies present in the sera of patients suffering from *C. difficile* infection, may be involved in *C. difficile* pathogenicity. Applicants, however, provide no examples or evidence that the combination of an antibiotic and a specific lactate dehydrogenase antibody (which has not even been disclosed) shows any beneficial effects in the treatment of *C. difficile* infection as compared to traditional antibiotics.

Demonstrated function of a newly identified protein, however, is a prerequisite to the final assessment of inventive step of claims **11-17 and 20-25**.

- 3.2) **Claims 18, 20 and 21** do not meet the requirements of Art. 33(3) PCT for the following reasons:

Claim 18 is directed to a diagnostic method for detecting the presence in a sample of *C. difficile* lactate dehydrogenase using an antibody or an antibody binding fragment specific against said enzyme. As antibodies specific for the claimed enzyme are known in the art (see par. 2.1) using such antibodies in a diagnostic method is not considered to involve an inventive step.